

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 3  
**DOCKET NO.:** 2007-0625-AGR-E **TCEQ ID:** RN101716298 **CASE NO.:** 33259  
**RESPONDENT NAME:** Petrus Adrianus Boekhorst dba Petal Dairy

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** Petal Dairy, 336 County Road 3368, Hopkins County

**TYPE OF OPERATION:** Dairy operation

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** A complaint was received January 16, 2007. The complainant alleged a reoccurring problem of the pumping of dairy waste and manure into unnamed creeks to the east and west of the facility. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** A complaint was received, but the complainant has not expressed the desire to protest this action or to speak at Agenda.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on September 10, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney/SEP Coordinator:** None  
**TCEQ Enforcement Coordinator:** Ms. Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468  
**Respondent:** Mr. Petrus Boekhorst, Owner, Petal Dairy, 336 County Road 3368, Saltillo, Texas 75478  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> January 16, 2007</p> <p><b>Date of Investigation Relating to this Case:</b> January 23, 2007</p> <p><b>Date of NOE Relating to this Case:</b> March 23, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation. Four violations were documented.</p> <p><b>WATER</b></p> <p>1) Failure to prevent unauthorized discharges. Specifically, wastewater was observed seeping through the dam in the final Retention Control Structure No. 4, flowing across the dairy property on the west side, and entering an unnamed creek from a culvert under County Road 3368. Wastewater was also observed pooling and flowing in and across Land Management Unit No. 2, leaving the dairy property and entering a creek flowing east of Farm-to-Market Road 900 [30 TEX. ADMIN. CODE § 321.31(a), TEX. WATER CODE § 26.121(a), and General Permit No. TXG920000, Part III A.11.(d)(1)].</p> <p>2) Failure to locate a holding pen at least 100 feet from a water well used for agriculture irrigation. Specifically, during the investigation, cattle were observed approximately ten feet from the irrigation well [30 TEX. ADMIN. CODE § 321.38(b)(3) and General Permit No. TXG920000, Part III A.4.(c)(1)(iii)].</p> <p>3) Failure to obtain certification by a licensed Texas professional engineer for the design specifications and construction of a new retention control structure. Specifically, a new retention control structure ("RCS") had been constructed and was in use, as documented during the January 23, 2007 investigation, and no</p>	<p><b>Total Assessed:</b> \$6,000</p> <p><b>Total Deferred:</b> \$1,200  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$4,800</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. By January 24, 2007, repaired the malfunctioning hose reel used for irrigation, pumped out the leaking retention control structure, and plugged a gopher hole in the bank of the retention control structure;</p> <p>b. By January 24, 2007, completed collecting and covering cattle carcasses at the Facility with compost soil;</p> <p>c. By January 29, 2007, provided a 100-foot buffer between cattle pen and irrigation well; and</p> <p>d. On May 21, 2007, provided certification by a licensed Texas professional engineer for the design specifications and construction of the new retention control structure/settling pond.</p>

<p>certification for its design or completed construction could be provided to the investigator [30 TEX. ADMIN. CODE § 321.38(e)(2) and General Permit No. TXG920000, Part III A.6.(a)(1)].</p> <p>4) Failure to collect and properly dispose of cattle carcasses. Specifically, partially covered and uncovered cattle carcasses were documented during the January 23, 2007 investigation [30 TEX. ADMIN. CODE § 321.36(l) and General Permit No. TXG920000, Part III A.10.(c)].</p>		
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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

**TCEQ**

**DATES**

Assigned 26-Mar-2007  
PCW 16-Apr-2007

Screening 12-Apr-2007

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Petrus Adrianus Boekhorst dba Petal Dairy  
Reg. Ent. Ref. No. RN101716298  
Facility/Site Region 5-Tyler Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 33259 No. of Violations 4  
Docket No. 2007-0625-AGR-E Order Type 1660  
Media Program(s) Water Quality Enf. Coordinator Merrilee Hupp  
Multi-Media EC's Team Enforcement Team 1  
Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

### TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$7,500

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History -10% Enhancement Subtotals 2, 3, & 7 -\$750

Notes Reduction due to High Performer classification.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction Subtotal 5 \$750

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary  
Ordinary X  
N/A (mark with x)

Notes The Respondent achieved compliance on May 21, 2007 by providing a Texas Registered Professional Engineer's certification of the new retention control structure, stopping the unauthorized discharges, relocating the cattle pen, and covering exposed cattle carcasses.

Total EB Amounts \$34  
Approx. Cost of Compliance \$2,300

0% Enhancement\*

\*Capped at the Total EB \$ Amount

Subtotal 6 \$0

### SUM OF SUBTOTALS 1-7

Final Subtotal \$6,000

### OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment \$0

Notes

Final Penalty Amount \$6,000

### STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$6,000

### DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

20% Reduction

Adjustment -\$1,200

Notes

Deferral offered for expedited settlement.

### PAYABLE PENALTY

\$4,800

Screening Date 12-Apr-2007

Docket No. 2007-0625-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 2 (September 2002)

Case ID No. 33259

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN101716298

Media [Statute] Water Quality

Enf. Coordinator Merrillée Hupp

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Reduction due to High Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) -10%

Screening Date 12-Apr-2007

Docket No. 2007-0625-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 2 (September 2002)

Case ID No. 33259

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN101716298

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.31(a), Tex. Water Code § 26.121(a), and General Permit No. TXG920000, Part III A.11.(d)(1)

## Violation Description

Failed to prevent unauthorized discharges, as documented during the January 23, 2007 investigation. Specifically, wastewater was observed seeping through the dam in the final Retention Control Structure No. 4, flowing across the dairy property on the west side, and entering an unnamed creek from a culvert under County Road 3368. Wastewater was also observed pooling and flowing in and across Land Management Unit No. 2, leaving the dairy property and entering a creek flowing east of Farm-to-Market Road 900.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 2

1 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$5,000

Two single events are recommended for the two unauthorized discharges documented during the January 23, 2007 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$4,000

This violation Final Assessed Penalty (adjusted for limits) \$4,000

## Economic Benefit Worksheet

**Respondent** Petrus Adrianus Boekhorst dba Petal Dairy  
**Case ID No.** 33259  
**Reg. Ent. Reference No.** RN101716298  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$300	23-Jan-2007	24-Jan-2007	0.0	\$0	n/a	\$0

Notes for DELAYED costs

Cost is approximate for the labor, materials, and disposal associated with the pumping and irrigation of wastewater, plugging of a gopher hole in the bank of a retention control structure, and repair of a malfunctioning hose reel used for irrigation. Date required is the investigation date and final date is when the unauthorized discharges had ceased, the repairs of faulty irrigation equipment had been completed, and the leak in the retention control structure had been addressed.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$0



Screening Date 12-Apr-2007

Docket No. 2007-0625-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 2 (September 2002)

Case ID No. 33259

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN101716298

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 321.38(b)(3) and General Permit No. TXG920000, Part III  
A.4.(c)(1)(iii)

Violation Description

Failed to locate a holding pen at least 100 feet from a water well used for agriculture irrigation, as documented during the January 23, 2007 investigation. Specifically, during the investigation, cattle were observed approximately ten feet from the irrigation well.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix  
Notes

Failure to provide the required buffer zone for an irrigation well from cattle pens could result in exposure of human health and environmental factors to an insignificant amount of pollutants.

Adjustment \$9,500

\$500

## Violation Events

Number of Violation Events 1

6 Number of violation days

mark only one  
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event is recommended based upon the January 23, 2007 investigation date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$400

This violation Final Assessed Penalty (adjusted for limits) \$400

## Economic Benefit Worksheet

**Respondent** Petrus Adrianus Boekhorst dba Petal Dairy  
**Case ID No.** 33259  
**Reg. Ent. Reference No.** RN101716298  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
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### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$400	23-Jan-2007	29-Jan-2007	0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Cost is approximate for the labor and fencing materials associated with the required buffer zone distance between cattle pens and the irrigation well. Date required is the investigation date and final date is the date cattle pen was relocated and compliance was achieved.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$400

TOTAL

\$0

Screening Date 12-Apr-2007

Docket No. 2007-0625-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 2 (September 2002)

Case ID No. 33259

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN101716298

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 321.38(e)(2) and General Permit No. TXG920000, Part III  
A.6.(a)(1)

Violation Description

Failed to obtain certification by a licensed Texas professional engineer for the design specifications and construction of a new retention control structure. Specifically, a new retention control structure ("RCS") had been constructed and was in use, as documented during the January 23, 2007 investigation, and no certification for its design or completed construction could be provided to the investigator.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100 percent of the requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

97 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended based on the January 23, 2007 investigation date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$34

Violation Final Penalty Total \$800

This violation Final Assessed Penalty (adjusted for limits) \$800

# Economic Benefit Worksheet

Respondent Petrus Adrianus Boekhorst dba Petal Dairy  
 Case ID No. 33259  
 Reg. Ent. Reference No. RN101716298  
 Media Water Quality  
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$1,500	23-Jan-2007	21-May-2007	0.3	\$2	\$32	\$34
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Cost is approximate for the certification of a new retention control structure ("RCS"). Date required is the investigation date and final date is when certification of the RCS was completed and submitted to the TCEQ to demonstrate compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$34

Screening Date 12-Apr-2007

Docket No. 2007-0625-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 2 (September 2002)

Case ID No. 33259

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN101716298

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 321.36(l) and General Permit No. TXG920000, Part III A.10.(c)

Violation Description

Failed to collect and properly dispose of cattle carcasses. Specifically, partially covered and uncovered cattle carcasses were documented during the January 23, 2007 investigation.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to collect and properly dispose of cattle carcasses may result in exposure of human health or the environment to a significant amount of pollutants below levels protective of human health or the environment.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the January 23, 2007 investigation date to the date compliance was achieved on January 24, 2007.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$800

This violation Final Assessed Penalty (adjusted for limits) \$800

## Economic Benefit Worksheet

**Respondent** Petrus Adrianus Boekhorst dba Petal Dairy  
**Case ID No.** 33259  
**Reg. Ent. Reference No.** RN101716298  
**Media** Water Quality  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$100	23-Jan-2007	24-Jan-2007	0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Cost is approximate for the labor associated with the covering of cattle carcasses. Date required is the investigation date and final date is when compliance was achieved.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

# Compliance History

Customer/Respondent/Owner-Operator:	CN602843195	BOEKHORST, PETRUS ADRIANUS	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101716298	PETAL DAIRY	Classification: HIGH	Site Rating: 0.00
ID Number(s):	WASTEWATER AGRICULTURE	PERMIT	TXG920170	
Location:	336 COUNTY ROAD 3368, HOPKINS CO.	Rating Date: September 01 06	Repeat Violator: NO	
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	April 17, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 17, 2002 to August 31, 2006			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Merrilee G. Hupp	Phone:	512-239-4490	

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
    - 1 06/24/2003 (61680)
    - 2 07/31/2003 (144900)
    - 3 08/03/2004 (283070)
    - 4 07/20/2005 (400007)
    - 5 05/22/2006 (466765)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A





# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
PETRUS ADRIANUS BOEKHORST  
DBA PETAL DAIRY  
RN101716298**

§ **BEFORE THE**  
§  
§ **TEXAS COMMISSION ON**  
§  
§ **ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-0625-AGR-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Petrus Adrianus Boekhorst dba Petal Dairy ("Mr. Boekhorst") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Boekhorst appear before the Commission and together stipulate that:

1. Mr. Boekhorst owns a dairy operation at 336 County Road 3368 in Hopkins County, Texas (the "Facility").
2. Mr. Boekhorst has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26
3. The Commission and Mr. Boekhorst agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Boekhorst is subject to the Commission's jurisdiction.
4. Mr. Boekhorst received notice of the violations alleged in Section II ("Allegations") on or about March 28, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Boekhorst of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Six Thousand Dollars (\$6,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Boekhorst has paid Four Thousand Eight Hundred Dollars (\$4,800) of the administrative penalty and One



Thousand Two Hundred Dollars (\$1,200) is deferred contingent upon Mr. Boekhorst's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Boekhorst fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Boekhorst to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Boekhorst have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Mr. Boekhorst has implemented the following corrective measures at the Facility:
  - a. By January 24, 2007, repaired the malfunctioning hose reel used for irrigation, pumped out the leaking retention control structure, and plugged a gopher hole in the bank of the retention control structure;
  - b. By January 24, 2007, completed collecting and covering cattle carcasses at the Facility with compost soil;
  - c. By January 29, 2007, provided a 100-foot buffer between cattle pen and irrigation well; and
  - d. On May 21, 2007, provided certification by a licensed Texas professional engineer for the design specifications and construction of the new retention control structure/settling pond.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Boekhorst has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner of the Facility, Mr. Boekhorst is alleged to have:

1. Failed to prevent unauthorized discharges, in violation of 30 TEX. ADMIN. CODE § 321.31(a), TEX. WATER CODE § 26.121(a), and General Permit No. TXG920000, Part III A.11.(d)(1), as documented during an investigation conducted on January 23, 2007. Specifically, wastewater was observed seeping through the dam in the final Retention Control Structure No. 4, flowing



across the dairy property on the west side, and entering an unnamed creek from a culvert under County Road 3368. Wastewater was also observed pooling and flowing in and across Land Management Unit No. 2, leaving the dairy property and entering a creek flowing east of Farm-to-Market Road 900.

2. Failed to locate a holding pen at least 100 feet from a water well used for agriculture irrigation, in violation of 30 TEX. ADMIN. CODE § 321.38(b)(3) and General Permit No. TXG920000, Part III A.4.(c)(1)(iii), as documented during an investigation conducted on January 23, 2007. Specifically, during the investigation, cattle were observed approximately ten feet from the irrigation well.
3. Failed to obtain certification by a licensed Texas professional engineer for the design specifications and construction of a new retention control structure, in violation of 30 TEX. ADMIN. CODE § 321.38(e)(2) and General Permit No. TXG920000, Part III A.6.(a)(1), as documented during an investigation conducted on January 23, 2007. Specifically, a new retention control structure ("RCS") had been constructed and was in use, and no certification for its design or completed construction could be provided to the investigator.
4. Failed to collect and properly dispose of cattle carcasses, in violation of 30 TEX. ADMIN. CODE § 321.36(l) and General Permit No. TXG920000, Part III A.10.(c), as documented during an investigation conducted on January 23, 2007. Specifically, partially covered and uncovered cattle carcasses were documented during the investigation.

### III. DENIALS

Mr. Boekhorst generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Boekhorst pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Boekhorst's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Petrus Adrianus Boekhorst dba Petal Dairy, Docket No. 2007-0625-AGR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088



2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Boekhorst. Mr. Boekhorst is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Boekhorst in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Boekhorst, or three days after the date on which the Commission mails notice of the Order to Mr. Boekhorst, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

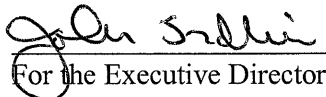




## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

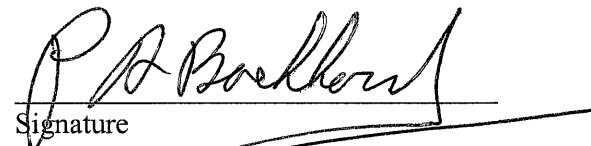
9/7/07  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

6-18-07  
\_\_\_\_\_  
Date

P.A. BOEHHORST  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Petrus Adrianus Boekhorst dba Petal Dairy

Owner  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

